

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

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CHAPTER 228

HOUSE BILL 2503

AN ACT

AMENDING SECTIONS 36-557 AND 36-595, ARIZONA REVISED STATUTES; RELATING TO
DEVELOPMENTAL DISABILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-557, Arizona Revised Statutes, is amended to
3 read:

4 36-557. Community developmental disability services; service
5 providers

6 A. The department may use state and federal funds appropriated or
7 otherwise available to it for this purpose to assist in the establishment and
8 maintenance of local developmental disability services by public or private
9 nonprofit or profit agencies. The funds may be expended as professional fees
10 for service, in contracts for advancement or reimbursement or in another
11 appropriate manner and may be used for any purpose necessary to the provision
12 of local developmental disability services. They may not be used for
13 departmental salaries, care of developmentally disabled persons by the
14 department or any other purpose within the department itself, but they may be
15 used for consultation to the department in the interest of local programs.

16 B. A local public or private nonprofit or profit agency providing or
17 intending to provide community developmental disability services and desiring
18 to contract with the department for the furnishing of such services shall
19 submit a program plan and budget to the department on the forms and in the
20 manner required by the department. If the program meets departmental
21 standards and is consistent with the state plan of the department and the
22 individualized service program plan of the client, the department,
23 notwithstanding the provisions of title 41, chapter 23, relating to
24 procurement and including services pursuant to section 36-2943, may contract
25 with that agency for such REQUIRED services ~~as are required and upon such ON~~
26 ~~terms and conditions as the department shall require~~ REQUIRES. The contracts
27 shall provide that the provider of services ~~shall be~~ IS subject to a
28 continuing program evaluation by the department through progress reports,
29 expenditure reports, program audits or other appropriate evaluation
30 techniques and to assure that the provider of service is in continued
31 compliance with the terms of the contract and the department's community
32 developmental disability service standards and requirements.

33 C. Contracts between the department and a school district or districts
34 ~~shall be~~ ARE subject to approval by the department of education.

35 D. This article does not make the department or the state responsible
36 for funding programs beyond the limits of legislative appropriation for the
37 programs. This article does not require a provider of services to provide
38 unreimbursed services to the department or its clients.

39 E. Contracts to provide community developmental disability services
40 shall require that:

41 1. The contractor is obligated to operate a program or service in
42 strict accordance with the standards adopted for ~~such~~ THAT program or service
43 by the department.

1 2. If state funding is provided for a particular program the
2 contractor, to the extent of positions available ~~which~~ THAT are being
3 purchased by the department, shall provide services to a developmentally
4 disabled client who has been evaluated and placed by the department.

5 3. All contractors must carry liability insurance in amounts approved
6 by the risk management ~~section~~ DIVISION of the department of administration
7 and file proof of such insurance with the risk management ~~section~~ DIVISION.
8 The director may waive ~~such~~ THAT requirement on a case by case basis ~~upon~~ ON
9 a finding that insurance for ~~such~~ THE program or service is not practicably
10 available at affordable rates and that it is necessary that the program or
11 service be provided by the contractor.

12 4. All clients enrolled in programs shall have all the same specified
13 rights as they would have if enrolled in a program operated directly by the
14 state.

15 5. Except for emergency placement pursuant to section 36-560,
16 subsection N, payment shall not be made based on program services provided to
17 a client if a placement evaluation has not been made, and no individual
18 program has been prepared and when, ~~upon~~ ~~such~~ BASED ON THAT placement
19 evaluation, no recommendation has been made to enroll the client in the
20 particular program service.

21 F. This article does not require a contracted agency to provide
22 unreimbursed services to the department or a client of the department.

23 ~~F.~~ G. Contracts for the purchase of residential care services other
24 than those community residential settings licensed pursuant to this chapter
25 ~~shall~~, in addition to other general requirements applicable to purchase of
26 care contractors SHALL:

27 1. Provide for mandatory inspection by the department every two years
28 for facilities other than group homes.

29 2. Provide for mandatory monitoring by the department for health,
30 safety, contractual and programmatic standards at least every six months,
31 UNLESS THE DEPARTMENT HAS GRANTED DEEMED STATUS TO THE SERVICE PROVIDER. IF
32 THE DEPARTMENT HAS GRANTED DEEMED STATUS, IT SHALL MONITOR ONCE EACH YEAR.
33 ON DETERMINATION BY THE DEPARTMENT THAT THERE IS REASONABLE CAUSE TO BELIEVE
34 A SERVICE PROVIDER IS NOT ADHERING TO THE DEPARTMENT'S PROGRAMMATIC OR
35 CONTRACTUAL REQUIREMENTS, THE DEPARTMENT AND ANY DULY DESIGNATED EMPLOYEE OR
36 AGENT OF THE DEPARTMENT MAY ENTER ON AND INTO THE PREMISES AT ANY REASONABLE
37 TIME FOR THE PURPOSE OF DETERMINING THE STATE OF COMPLIANCE WITH THE
38 PROGRAMMATIC OR CONTRACTUAL REQUIREMENTS OF THE DEPARTMENT.

39 3. Provide for mandatory investigation by the department in response
40 to complaints within ten working days, except that in those instances ~~which~~
41 THAT pose a danger to the client, the department shall conduct the
42 investigation immediately. Health and safety complaints related to group
43 homes shall be referred to the department of health services on receipt. The
44 department of health services shall share all incident reports related to
45 health and safety with the division of developmental disabilities.

1 4. Except for group homes licensed by the department of health
2 services, specify the health and safety and sanitation codes and other codes
3 or standards applicable to the facility or to the operation of the facility
4 by the contractor other than group homes.

5 5. Provide for mandatory periodic reports to be filed by the provider
6 contractor with the department with respect to the operation of the facility.

7 6. Provide that the facility and the books and records of the facility
8 and of the provider are subject to inspection at any time by employees of the
9 department or designees of the department.

10 7. Provide that parents and guardians of developmentally disabled
11 persons residing at the facility, members of the developmental disabilities
12 advisory council, and members of other recognized and ongoing advocacy groups
13 for developmentally disabled persons may inspect the facility at reasonable
14 times.

15 ~~G.~~ H. Contracts for purchase of residential care services shall
16 require a community residential setting, ~~as defined in section 36-551,~~ to be
17 licensed pursuant to this chapter other than group homes licensed by the
18 department of health services.

19 ~~H.~~ I. The division shall ensure that all contracted developmental
20 disabilities service providers rendering services pursuant to this chapter
21 are reimbursed in accordance with title XIX of the social security act.

22 ~~I.~~ J. Contracts for client services issued by the department shall
23 include language outlining the provisions for a grievance and appeal
24 procedure. The director shall provide notice to providers not less than
25 thirty days ~~prior to~~ BEFORE the issuance of an amendment to a qualified
26 vendor agreement. ~~Beginning September 1, 2006,~~ The decision of the director
27 regarding qualified vendor agreement amendments may be appealed pursuant to
28 title 41, chapter 6, article 10. The grievance process applicable to these
29 contracts shall comply with title XIX requirements.

30 ~~J.~~ K. As a condition of contracts with any developmental disabilities
31 service provider, the director shall require terms that conform with state
32 and federal laws, title XIX statutes and regulations and quality
33 standards. The director shall further require contract terms that ensure
34 performance by the provider of the provisions of each contract executed
35 pursuant to this article.

36 ~~K.~~ L. The division shall establish a rate structure that ensures an
37 equitable funding basis for private nonprofit or for profit agencies for
38 services pursuant to subsection B of this section and section 36-2943. In
39 each fiscal year, the division shall review and adjust the rate structure
40 based on ~~the provisions of~~ section 36-2959. A rate book shall be published
41 and updated by the division to announce the rate structure that shall be
42 incorporated by reference in contracts for client services.

43 ~~L.~~ M. The division shall disclose to a service provider in the
44 individual program plan defined by section 36-551, and in all meetings
45 resulting from a response to a vendor call, any historical and behavioral

1 information necessary for the provider to be able to anticipate the client's
2 future behaviors and needs including summary information from the program
3 review committee, unusual incident reports reviewed by the human rights
4 committee and behavioral treatment plans. The division shall redact the
5 client's identification from this information.

6 ~~M-~~ N. Service providers are authorized to engage in the following
7 activities in accordance with a client's individual program plan:

8 1. Administer medications, including assisting with the client's
9 self-administration of medications.

10 2. Log, store, remove and dispose of medications.

11 3. Maintain medications and protocols for direct care.

12 4. SERVE AS THE CLIENT'S REPRESENTATIVE PAYEE IF REQUESTED BY THE
13 CLIENT OR THE CLIENT'S GUARDIAN AND APPROVED BY THE PAYER.

14 ~~N-~~ O. The department may adopt rules establishing procedures for
15 engaging in the activities listed in subsection ~~M-~~ N of this section.

16 ~~O-~~ P. To protect the health and safety of a client, a provider must
17 notify the division within twenty-four hours if an emergency situation exists
18 in which the provider is unable to meet the health or safety needs of the
19 client.

20 ~~P-~~ Q. On notification of an emergency situation, the department shall
21 hold an individual program plan meeting within fifteen days after
22 notification to recommend any changes, including whether there is a need for
23 temporary additional staffing to provide appropriate care for a client, and
24 develop a plan within thirty days after notification to resolve the
25 situation.

26 Sec. 2. Section 36-595, Arizona Revised Statutes, is amended to read:

27 36-595. Programmatic and contractual monitoring

28 A. The department of economic security shall perform programmatic and
29 contractual monitoring of the services it provides or for which it contracts.

30 B. THE DEPARTMENT SHALL PROMULGATE RULES THAT PROVIDE FOR DEEMED
31 STATUS. THE DEPARTMENT SHALL GRANT DEEMED STATUS TO A SERVICE PROVIDER THAT
32 PRESENTS EVIDENCE THAT IT MAINTAINS A CURRENT ACCREDITATION FROM A NATIONALLY
33 RECOGNIZED AGENCY THAT THE DEPARTMENT DETERMINES MAINTAINS ACCREDITATION
34 STANDARDS THAT MEET THE STANDARDS ESTABLISHED BY THE DEPARTMENT. ON
35 DETERMINATION BY THE DEPARTMENT THAT THERE IS REASONABLE CAUSE TO BELIEVE A
36 SERVICE PROVIDER IS NOT ADHERING TO THE PROGRAMMATIC OR CONTRACTUAL
37 REQUIREMENTS OF THE DEPARTMENT, THE DEPARTMENT AND ANY DULY DESIGNATED
38 EMPLOYEE OR AGENT OF THE DEPARTMENT MAY ENTER ON AND INTO THE PREMISES AT ANY
39 REASONABLE TIME FOR THE PURPOSE OF DETERMINING THE STATE OF COMPLIANCE WITH
40 THE PROGRAMMATIC OR CONTRACTUAL REQUIREMENTS OF THE DEPARTMENT. THE
41 DEPARTMENT MAY REVOKE DEEMED STATUS BASED ON THE FINDINGS OF PROGRAMMATIC AND
42 CONTRACTUAL MONITORING.

43 ~~B-~~ C. The department of health services may deny, suspend or revoke a
44 license for a violation of this article or department rules. At least thirty
45 days before the department denies, revokes or suspends a license it shall

1 mail the applicant or licensee a notice of that person's right to a hearing.
2 The department shall issue this notice by certified mail, return receipt
3 requested. The notice shall state the hearing date and the facts
4 constituting the reasons for the department's action and shall cite the
5 specific statute or rule violated.

6 ~~C.~~ D. If the person does not respond to the written notice, the
7 department of health services, at the expiration of the time fixed in the
8 notice, shall take the action prescribed in the notice. If the person,
9 within the period fixed in the notice, conforms the application or the
10 operation of the facility to the applicable statute or rule, the department
11 may grant the license or withdraw the notice of suspension or revocation.

APPROVED BY THE GOVERNOR MAY 6, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 6, 2010.